

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

	* * *	
PARTNER WEEKLY, LLC,	)	
	)	
Plaintiff,	)	
	)	2:09-cv-02120-PMP-VCF
v.	)	
	)	<b>ORDER</b>
VIABLE MARKETING CORPORATION, <i>et al.</i> ,	)	
	)	(Motion For Extension of Time to Respond
	)	to Complaint #65)
Defendants.	)	
	)	

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Before the court is defendant Chad Elie's Motion For Extension of Time to Respond to Complaint. (#65). Plaintiff Partner Weekly, LLC filed an Opposition. (#69). Defendant Elie did not file a Reply.

**Background**

Plaintiff filed its complaint on October 7, 2009, in the Eighth Judicial District Court, Clark County, Nevada against Viable Marketing Corporation (hereinafter "Viable Marketing"), Chad Edward Elie, in his individual capacity and as an officer of Viable Marketing, and Doe defendant X. (#1-2). The complaint arises from an Advertising Agreement plaintiff and defendants entered into whereby plaintiff would promote defendants' goods and services. *Id.* Plaintiff alleges that defendants "knowingly and intentionally, and in bad faith, stopped paying for the services provided by [p]laintiff." *Id.* Plaintiff asserts claims for (1) breach of contract, (2) unjust enrichment, (3) breach of good faith and fair dealing, (4) negligence, and (5) alter ego/piercing the corporate veil. *Id.*

Defendants Viable Marketing and Elie removed the action to this court on November 4, 2009, based on diversity jurisdiction pursuant to 28 U.S.C. § 1332. (#1). On December 7, 2009, defendants filed a motion to stay pending arbitration, or in the alternative, to transfer venue. (#10). Plaintiff filed an opposition on December 18, 2009 (#13), and defendants filed a reply on December 23, 2009 (#14).

1 The court held a hearing on the motion (#10) on February 8, 2010, and granted the request to stay  
2 proceedings and denied the request to transfer venue. (#19). The court ordered the parties to file a  
3 status report regarding the arbitration proceedings by August 8, 2010. *Id.* On June 22, 2010,  
4 defendants' attorney filed a motion to withdraw (#20), which the court granted on the same day (#21).  
5 On July 28, 2010, defendants filed a motion to substitute attorney. (#22). The court granted the motion  
6 to substitute (#22) on August 5, 2010. (#28).

7 On August 6, 2010, defendants filed a status report pursuant to this court's order (#19). (#31).  
8 Defendants stated that plaintiff attempted to initiate arbitration proceedings with American Arbitration  
9 Association, but that plaintiff filed the demand with the wrong office and failed to remit the fee  
10 necessary to commence arbitration. *Id.* Defendants also stated that they were willing to go to  
11 arbitration and that the plaintiff must be ordered to pay the fee and arbitrate the claims. *Id.* Plaintiff  
12 did not respond to the defendants' status report (#31). On March 17, 2011, the court issued an order  
13 for plaintiff to show cause by April 6, 2011, why this action should not be dismissed. (#32). Plaintiff  
14 filed a response to the order to show cause (#32) on April 1, 2011, stating that the parties were currently  
15 engaged in arbitration and would provide the court with status reports as necessary. (#33).

16 On September 12, 2011, plaintiff filed a motion to confirm arbitration award. (#34).  
17 Defendants filed an opposition on September 29, 2011. (#35). On October 6, 2011, the court issued  
18 an order denying *without prejudice* the plaintiff's motion (#34). (#36). On November 23, 2011,  
19 defendants filed a motion to vacate arbitration award (#38) and a proposed order (#39). On December  
20 5, 2011, plaintiff filed an opposition and a counter-motion to confirm. (#40). Defendants filed a reply  
21 on December 12, 2011. (#41). On April 9, 2012, the court issued an order denying the motion to vacate  
22 arbitration award (#38), and granting the counter-motion to confirm the arbitration award (#40). (#42).  
23 The court held that "[t]he arbitrator's Order Granting Claimant's Motion for Summary Judgment dated  
24 August 26, 2011 is hereby CONFIRMED. IT IS FURTHER ORDERED that Judgment is hereby  
25 entered confirming the arbitrator's Order Granting Claimant's Motion for Summary Judgment dated  
26

1 August 26,

2 2011.” *Id.*

3 Defendants filed a Notice of Appeal on May 3, 2012. (#43). On October 9, 2012, defendants  
4 filed a Rule 60(A) motion to amend/correct the court’s April 9, 2012, order (#42). (#49). On October  
5 15, 2012, defendants filed a motion for an indicative ruling pursuant to Rule 62.1. (#50). Plaintiff filed  
6 an opposition to the motion to amend/correct on October 26, 2012. (#51). On November 1, 2012,  
7 plaintiff filed an opposition to the motion for indicative ruling. (#52). Defendants filed a reply in  
8 support of the motion for an indicative ruling on November 8, 2012. (#54). The court issued an order  
9 on December 4, 2012, denying the motion to amend/correct (#49) and granting the motion for indicative  
10 ruling (#50) “to the extent that the Court hereby indicates it would amend the Judgment so as to confirm  
11 the arbitration award against only Defendant Viable Marketing Corp., and not against Defendant Chad  
12 Elie, if the Ninth Circuit remands the matter to this Court for that purpose.” (#55).

13 On January 29, 2013, the Ninth Circuit issued an order granting appellant’s motion for leave  
14 to file motion under Rule 60(a). (#56). Defendants filed a motion to amend/correct order #42 on  
15 motion to vacate on February 8, 2013. (#57). Plaintiff filed an opposition on February 25, 2013 (#58),  
16 and defendants filed a reply on March 7, 2013 (#59). On March 15, 2012, the court entered an order  
17 granting defendants’ motion to amend/correct (#57) and holding that “the Order (Doc. #42) is hereby  
18 amended to reflect that the arbitrator’s Order Granting Claimant’s Motion for Summary Judgment dated  
19 August 26, 2011 is CONFIRMED as between Partner Weekly, LLC and Viable Marketing Corp. only.  
20 IT IS FURTHER ORDERED that Defendant Chad Elie shall file an answer or otherwise respond to the  
21 Complaint within thirty (30) days from the date of this Order, which may include the defenses or  
22 arguments raised in Defendants’ reply brief that Plaintiff PartnerWeekly, LLC’s failure to pursue an  
23 alter ego claim against Chad Elie in the arbitration proceedings precludes further litigation of that  
24 claim.” (#60)(emphasis added).

25 On March 18, 2013, the clerk entered judgment in favor of plaintiff and against Viable  
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1 Marketing. (#61). The Ninth Circuit issued an order on March 25, 2013, granting defendants'  
2 voluntary dismissal. (#62). On April 5, 2013, defendant Elie filed the instant motion to extend time  
3 to respond to the complaint. (#65). Attorney Sigal Chattah, Esq. filed a notice of appearance on behalf  
4 of defendant Elie on April 8, 2013. (#66). Also on April 8, 2013, attorneys Craig S. Denney, Esq. and  
5 Jeff Ifrah, Esq. filed a motion to withdraw as attorney of record for defendants. (#67). The court  
6 granted the motion (#67) on April 9, 2013. (#68). On April 10, 2013, plaintiff filed an opposition to  
7 defendant Elie's motion to extend time. (#69). Defendant did not file a reply.

## 8 **Motion to Extend Time**

### 9 **A. Arguments**

10 Defendant Elie asks this court extend the time to file an answer to the plaintiff's complaint to  
11 July 15, 2013. (#65). Defendant's prior counsel, Mr. Ifrah, stated that four days prior to the court  
12 issuing its order setting the response deadline, he received correspondence from Mr. Chattah, stating  
13 that he had been retained by defendant Elie. (#65 Exhibit 1). Mr. Ifrah asserted that he tried to confirm  
14 this with defendant Elie, but was unable to do so because defendant is incarcerated. (#65). Mr. Ifrah  
15 contends that he has been unable to reach defendant Elie to obtain permission to file a responsive  
16 pleading, and that a three month extension is warranted. *Id.* Defendant Elie will be released from  
17 custody on June 26, 2013, and prior counsel stated that he believes that he will need until July 15, 2013,  
18 to file the responsive pleading on defendant Elie's behalf. *Id.* After filing the motion (#65), Mr. Ifrah  
19 withdrew from this action (#67) and Mr. Chattah appeared on behalf of defendant Elie (#66).

20 Plaintiff argues that the ninety (90) day extension is unwarranted, because (1) defendant has not  
21 been diligent, (2) new counsel is obviously able to communicate with defendant during his  
22 incarceration, (3) the action has been pending since 2009, (4) the requirement to file a responsive  
23 pleading was reasonably known to defendant, and (5) plaintiff would be harmed by the delay, as there  
24 is a greater risk that plaintiff will be unable to recover funds from defendant Elie if more time passes,  
25 due to the pending civil and criminal matters against him. (#69). Plaintiff asserts that it agrees to a

1 thirty (30) day extension of time. *Id.*

2 **B. Relevant Law/Discussion**

3 Federal Rule of Civil Procedure 6(b)(1) provides that “[w]hen an act may or must be done  
4 within a specified time, the court may, for good cause, extend the time: (A) with or without motion or  
5 notice if the court acts, or if a request is made, before the original time or its extension expires; or (B)  
6 on motion made after the time has expired if the party failed to act because of excusable neglect.” The  
7 court ordered defendant Elie to file a responsive pleading on or before April 15, 2013. (#60).  
8 Defendant Elie filed the instant motion to extend time on April 5, 2013. (#65). The court must  
9 therefore find “good cause” to extend the deadline. *See* Fed. R. Civ. P. 6(b)(1)(A).

10 Defendant’s prior counsel sought a ninety (90) day extension of time due to the fact that  
11 defendant is incarcerated and counsel was unable to communicate with him. (#65). New counsel has  
12 appeared on behalf of defendant Elie (#66) and has presumably been in contact with him, as counsel  
13 did not file a reply demonstrating to the court the continued need for the ninety (90) day extension. The  
14 court finds that “good cause” exists to grant defendant an extension in light of new counsel’s  
15 representation. *See* Fed. R. Civ. P. 6(b)(1)(A). Plaintiff opposes the ninety (90) day extension, but  
16 agrees to a thirty (30) day extension of the deadline. (#69). The court finds that a ninety (90) day  
17 extension is unnecessary. Under the circumstance described by the parties, an extension of thirty (30)  
18 days from the entry of this order is sufficient for defendant Elie to file a pleading responsive to the  
19 complaint. Defendant Elie did not file a reply to plaintiff’s opposition.

20 Accordingly, and for good cause shown,

21 IT IS ORDERED that defendant Chad Elie’s Motion For Extension of Time to Respond to  
22 Complaint (#65) is GRANTED in part and DENIED in part, as discussed above. Defendant Elie has  
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up to and including June 3, 2013, to file a responsive pleading.

DATED this 1st day of May, 2013.



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**CAM FERENBACH**  
**UNITED STATES MAGISTRATE JUDGE**